



Water Services Regulatory Board (WASREB)

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8th April, 2013

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RE: **ADVISORY CIRCULAR 1 OF 2013**
IMPLEMENTATION OF CORPORATE GOVERNANCE STANDARDS IN WSPs

We refer to the captioned matter and commend WSBs and their agents who have since 2009 enforced the standards and had their agents change their constitutions in order to embed transparency, accountability and checks and balances in the way in which leadership is exercised in the WSPs.

We also advise that even during the transition to devolution process the **standards must** continue to be incorporated in the constitutions of all water service providers and enforced.

Under powers granted by section 47 (I) h and J Water Act 2002 we advise the following:-

1. Due to the repeal of the Local Governments Act Cap 265 on the holding of 4th March 2013 elections all local authority functions were subsumed to the counties. This includes the functions of the local authority ownership, membership of the board of directors of the WSPs.
2. Under the County Governments Act 2012, political office holders are prohibited from performing any executive functions. This provision buttresses what WASREB has maintained that politicians should not be in the boards of directors of the WSPs. This then means that all seats in the Boards of Directors by Councillors and Mayors shall remain vacant and shall not be filled by any other person **for now** due to the prohibition by section 9 of the County Governments Act 2012.
3. The seats previously occupied by town clerks town treasurers as the case may be shall continue to be occupied by the said officers or as advised by the County Government. Once the County Executive Committees have been established they will give direction on who are the proper persons to replace the erst while town clerks and town treasurers. Whatever the case may be, the direction of the County Government Act is

that these people shall not be from the political or law making section of the county but from the Executive arm.

4. The WSPs should continue advertising for director positions to be filled competitively from the ***stakeholder*** group according to the standards in the Corporate Governance Guideline. Due to the fact that the Transition Authority is yet to formally devolve the water services to the counties, rules made under the Water Act 2002 shall continue to be applied in the county as regards water service provision in line with Art. 183(l)b of the Constitution.
5. Where companies had not had their constitutions amended to comply materially to the governance standards, they shall have their boards of directors ratify the amendments required and submit them to the County Governor and County Executive Committee as Executive Authority is vested in the Committee and water and sewerage service is an executive function of the county.
6. We advise that the positions held by the mayors and councillors remain vacant with a view to reducing board composition to 5-9 members. The largest companies having 9 members and the small companies having 5 to create effective and efficient leadership structures for the WSPs management team. The reduction of members should also form part of the amendments to the existing constitutions.
7. For avoidance of doubt we reiterate that the key governance standards to be in the constitutions of the WSPs are:-
 - (a) Agency relationship between the WSP and the principal, and the successor to the principal who in this case shall be the county government.
 - (b) Protection of all water service assets and facilities from alienation.
 - (c) Incorporation of the principle of ploughing back surplus income until such time as optimal coverage in the WSP area demarcated is reached.
 - (d) Competitive appointment of directors from the area served by WSPs from eligible stakeholder groups.
 - (e) Membership in the board of two members from the executive arms of the local authority (county) if the company is not a cluster. If it is a cluster the maximum shall be four from the County Executive Officers, with the principle of rotation being upheld and a formula of ensuring that every area of the cluster is represented at the board of directors.

- (f) Gender requirement so that at least $\frac{1}{3}$ of the members shall be from the other gender
- (g) Incorporation of succession planning so that directors exit after serving a maximum of two terms.
- (h) Reporting to the stakeholders in a public forum the performance of the WSP.
- (i) Incorporation of stakeholder participation in board member selection
- (j) Competitive and open recruitment of all staff
- (k) Introduction of class B shareholders

Please note that all WSPs should have approved SPAs and the signed SPAs must be submitted to WASREB as soon as possible.

More guidance during the transition period will be given as you are aware we should continue implementing the Water Act 2002 with adaptations that allow us to accommodate the county government without disrupting service delivery or creating unnecessary antagonism, see Sixth Schedule of the Constitution part 2.

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CHIEF EXECUTIVE OFFICER

cc.

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